

**In the High Court of Uttarakhand at Nainital.**

Criminal Revision No. 40/2001  
(Old No. 670/1987)

- 1- Tota Ram S/o Jattan Ram,
- 2- Chandra Singh,
- 3- Sudamaram S/o Gauri Ram
- 4- Amardeo S/o Satya Prasad .....Revisionists.

Vs.

State .....Respondent.

**Sri L.K.Tiwari learned counsel for the revisionists.**

**Sri Nandan Arya learned A.G.A.**

**Date of judgment: -2-06-2004**

**Hon'ble Irshad Hussain, J.**

This criminal revision has been filed against the judgment and order dated 6.4.1987 passed by Sessions Judge, Tehri Garhwal in criminal appeal No. 22/1986 dismissed in appeal and upholding the conviction and sentence of the revisionists as awarded by the then Munsif Magistrate, Tehri Garhwal per judgment and order dated 31.7.1986 in criminal case No. 233/85 convicting and sentencing the revisionists under sections 147 and 332/149 I.P.C. for three months and one year's R.I. each respectively.

2- Revisionist No.1 Tota Ram is since deceased and the report had been received from the C.J.M. concerned. Therefore the revision on his behalf stand abated.

3- Learned counsel for the revisionist nos. 2 to 4 has not assailed the finding of the conviction as recorded by the learned Magistrate per judgment and order dated 31-7-1986 and also as affirmed by the Sessions Judge, Tehri Garhwal per judgment and order dated 6.4.1987 in criminal appeal no. 22/1986. The revisionists were convicted and sentenced to three months R.I. under section 147 I.P.C. and one year's R.I. under section 332/149 I.P.C. The learned counsel confined his submission only on the point of sentence and argued that considering the antecedents of the revisionists and their old age and also the important fact that the kiosk of Tota Ram deceased was the cause of obstruction and that the other revisionists who are alive have had no concern with the kiosk of the deceased revisionist no.1, a lenient

view should have been taken by the courts below in awarding the sentence. Learned counsel also submitted that considering the facts of the case the revisionists could have been extended benefit of the provisions of the probation of First Offenders Act. Learned counsel submitted that these revisionists are above 60 years old and that no useful purpose will be served if they are sent to undergo rigorous imprisonment as awarded. The occurrence took place way back in the year 1982 and it can not be doubted that the revisionists have grown up in age. It is also evident from the facts of the case that the cause of occurrence was a trifling matter pertaining to the removal of the kiosk of deceased revisionist no.1 from the public place where the work of construction was being under-taken under the supervision of the Assistant Engineer-informant Vijay Kishore. The other neighbours have then assembled there and some altercation took place when the said deceased-neighbour was asked to remove his kiosk so that the work in progress may not be hampered.

4- In the face of the facts of the case the submission of the learned counsel that lenient view should have been taken can not be said to be without force. Considering the old age of the above revisionists, their antecedents and that the occurrence took place in the year 1982 the ends of justice will be met if the sentence awarded is modified to the sentence of the imprisonment already undergone by these revisionists. It has been pointed out that the revisionists remained under detention after they surrendered and thereafter when their appeal by the Sessions Judge was dismissed and they were finally admitted to bail when the revision was admitted by the Allahabad High Court on 21.4.1987. The judgment by the Sessions Court was delivered on 6<sup>th</sup> of April 1987 and considering this it is evident that the revisionists were under detention for quite some time. The revisionists therefore may be sentenced to the period already undergone under sections 147, and 332/149 I.P.C.

5- For the reasons aforesaid the conviction of the revisionists 2 to 4 under sections 147 and 332/149 I.P.C. is maintained. The sentence awarded is however reduced and modified to the period of sentence

already undergone. The revisionists therefore need not surrender.  
Their bail bonds are cancelled and sureties discharged.

**(Irshad Hussain, J.)**

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